Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1979

No. 79-1606

KANSAS CITY, MISSOURI,
Appellee,

vs.

JAMES E. CARTER, JR.,
Appellant.

ON APPEAL FROM THE MISSOURI COURT OF APPEALS WESTERN DISTRICT, MOTION TO TRANSFER TO THE SUPREME COURT OF MISSOURI HAVING BEEN DENIED

MOTION TO DISMISS OR AFFIRM

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KANSAS CITY, MISSOURI,
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JAMES E. CARTER, JR.,
Appellant.

ON APPEAL FROM THE MISSOURI COURT OF APPEALS WESTERN DISTRICT, MOTION TO TRANSFER TO THE SUPREME COURT OF MISSOURI HAVING BEEN DENIED

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the United States Supreme Court Rules, appellee, Kansas City, Missouri, moves the Court to dismiss this appeal from the judgment and order of the Missouri Court of Appeals, Western District, upon the grounds that this appeal is not within the jurisdiction of this Court and that the question on which the decision of the lower Court rests does not present a substantial Federal question.

In the alternative, appellee, Kansas City moves the Court to affirm the aforementioned judgment and order on the ground that the question on which the decision of this cause rested is quite limited in scope and has been thoroughly considered by the Supreme Court of the United States and the Supreme Court of Missouri, thereby requiring no further argument.

JURISDICTION

Appellant has sought to invoke the jurisdiction of this Court pursuant to the provisions of 28 USC 1257(2). However, as is evident from the decision of the Missouri Court of Appeals, Western District (Jurisdictional Statement, Appendix page 1a) from which this appeal has been taken, the case of Kansas City v. James E. Carter, Jr., does not draw into question the validity of a Missouri statute or ordinance on the ground of its being repugnant to the Constitution, treaties or laws of the United States for the reason that the appellant preserved nothing for review; and further for the reason that this case presents no substantial federal question. 28 USC 1257(2). Accordingly, the questions presented by this appeal, standing alone, cannot be subject to review by this Court by way of an appeal. *DeBacker v. Brainard,* 396 US 28, 32, 90 Sup. Ct. 163, 24 L Ed 2d 148, 153 (1969); *Live Oak Water Users' Association v. Railroad Commission of California,* 269 US 354, 46 Sup. Ct. 149, 70 L Ed 305 (1926). Therefore, appellee Kansas City, Missouri submits that said appeal should be dismissed.

STATEMENT

Appellee, Kansas City, Missouri, respectfully submits that the facts constituting the basis of this appeal are incorrectly presented to this Court in the appellant's Jurisdictional Statement under the heading "Jurisdictional Statement" and again appellant incorrectly misstates this case in his Jurisdictional Statement under the heading "Question Presented by Appeal" for the reason that Kansas City, Missouri does not impose an occupation license tax on "natural citizens" or individuals working for wages or salaries. The authority for the imposition of Kansas City's Occupation License Tax is expressed pursuant to the provisions of Section 21.34 (Appendix page 19) which clearly and unequivocally imposes an occupation license tax only on "businesses".

The question presented on this appeal is whether a municipal corporation, pursuant to state authority, can impose an occupation license tax on businesses, whether those businesses be corporations or proprietorships.

Appellee, Kansas City, respectfully submits to this honorable Court that it believes it is not humanly possible to reasonably evaluate the jurisdictional issue here without some knowledge of the facts surrounding this comedy of errors. The appellant, Jimmy Carter, Jr., litigates "pro se". With that in mind appellee, Kansas City, is compelled to provide this Court with a reasonable statement of facts attendant to this cause cognizant of the fact that we are addressing ourselves to a Jurisdictional Statement and not the brief of the cause.

This cause originated in the Municipal Court of Kansas City, Missouri pursuant to a summons served on the defendant (April 5, 1978) charging the defendant, Carter, with doing business without an occupation license in violation

of Section 21.20 of the Code of General Ordinances of Kansas City (see transcript page 3) at his business location at 2440 Rochester, Kansas City, Jackson County, Missouri. A preliminary hearing in the Municipal Court was held on June 14, 1978 and judgment rendered against the defendant Carter at that time.

Subsequent thereto defendant Carter perfected his appeal to the Circuit Court, Division 4, of Jackson County, Missouri where trial was held, de novo, on July 14, 1978 (transcript page 22). The defendant Carter made his appearance, pro se, in the Municipal Court as well as in the Circuit Court.

From an adverse judgment in the Circuit Court of Missouri the defendant Carter appealed to the Supreme Court of Missouri (see transcript page 106) appearing to rest jurisdiction therein on a "construction of the federal or state constitution". However, on February 16, 1979 the Supreme Court of Missouri transferred this cause to the Missouri Court of Appeals, Western District, "in which jurisdiction is vested" (letter of February 16, 1979, Appendix page 26).

Meanwhile, contemporaneous with the Municipal Court action hereinbefore referenced defendant Carter filed a motion to dismiss for lack of jurisdiction (see transcript page 6) and thereafter on June 5 filed a petition for removal, all in the United States District Court, Western District of Missouri, Western Division (outside of the transcript) and also filed his original "Answer and Counterclaim" in the United States District Court on July 14, 1978 (see transcript page 14). Both documents failing to reflect any certification of service on the City or its legal representatives. No logical reason existed for this defendant Carter to file an "Original Answer and Counterclaim" in the United States District Court for the reason that there

was no *original petition* filed by the City or any of its representatives against the defendant in the federal courts. However, Kansas City on June 8, 1978, filed in the United States District Court its motion to dismiss defendant's *Petition for Removal* (see transcript page 27, lines 1 through 7). Apparently the defendant Carter's *Petition for Removal* was denied and apparently Kansas City's motion to dismiss defendant's petition for removal was sustained in the federal court (see transcript page 27, lines 20 through 25). However, the City did not receive a copy of the Federal District Court's Order and was therefore unaware of the ruling at the time this case came on for trial in the Circuit Court of Missouri (see transcript page 28, lines 1 through 18). Furthermore, in an additional effort by defendant to seemingly complicate further this matter, he appears, from the record, to have filed his "original answer and counterclaim" with the clerk of the *Municipal Court* (see transcript page 29, lines 23 through 25). The clerk of the Municipal Court is to be distinguished from the clerk of Kansas City, Missouri, a municipal corporation. Service of process in litigation should be served on the clerk of Kansas City, Missouri, a municipal corporation and not on the Municipal Court clerk.

Subsequently, upon receiving an adverse judgment in the Kansas City Municipal Court, the defendant appealed to the Circuit Court of Missouri and while in the Circuit Court, which provides for a trial de novo, the defendant Carter attempts to file his "Original Answer and Counterclaim", captioned for filing in the "United States District Court, Western District of Missouri, Western Division", on the City during the trial over the objections of the City's attorney (see transcript pages 34, 35, 36, 37 and 38). Appellee objects for the reason that pleadings are not required and answers and counterclaims are not provided for

by the rules in cases originating in the Municipal Court of Kansas City, Missouri.

It was under the conditions hereinbefore referenced that the Supreme Court of Missouri addressed itself to the jurisdictional issue in this case and for the obvious reasons as hereinafter provided, declined jurisdiction and referred this cause to the Missouri Court of Appeals, Western District on October 29, 1979.

The opinions of the Circuit Court of Missouri, Sixteenth Judicial Circuit, Division 4 and the Missouri Court of Appeals, Western District, are correctly set forth in appellant Carter's appendix on pages 1a through 4a.

Subsequent to the verdict of the Circuit Court, Division 4, Sixteenth Judicial Circuit, Jackson County, the appellant Carter filed a "Motion for New Judge" alleging "apparent prejudice of the Honorable Judge Randall" (transcript page 76); a motion for new trial (transcript page 77); a motion for "Default Judgment against the Complainant" (transcript page 80); and "Motion for Order to Show Cause why the Prosecuting Attorney should not be held in Contempt of Court" (transcript page 84).

All of the above-referenced motions were overruled at hearing, appellant Carter present, on September 14, 1978 (see transcript pages 100 through 105).

ARGUMENT

The Case Presents No Substantial Federal Question.

The issue presented to the Missouri Court of Appeals, Western District, by virtue of these proceedings was whether appellee, Kansas City, Missouri, a municipal corporation having its own charter, pursuant to State authority could impose an occupation license tax on sole proprietorships. Appellant, James Carter, Jr., misstates this case when he alleges the issue to be that of a municipal corporation's right to impose an occupation license tax on a "natural citizen" as distinguished from a corporation. Appellee, Kansas City, reiterates, Section 21.34 provides for the imposition of our occupation license taxes on businesses, whether corporations or sole proprietorships, and does not impose an occupation license tax on "natural citizens". There is no provision in appellee Kansas City's ordinances for providing an occupation license tax on persons working for wages or salaries.

The law with respect to this matter has long since been laid to rest by this Court and as a consequence thereof it is respectfully submitted this case presents no substantial federal question.

The law is quite expressive in holding municipal corporations are free to lay an occupation license tax on businesses pursuant to state authority. See *American Manufacturing Co. v. City of St. Louis,* 250 US 459, 39 Sup. Ct. 522, 63 L Ed 1084. Kansas City's power to tax emanates from the State pursuant to Article X, Section 1 "Taxation" V.A.M.S. which provides as follows:

> "The taxing power may be exercised by the General Assembly for state purposes, and by counties and other

political subdivisions under power granted to them by the General Assembly for county, municipal and other corporate purposes."

One of the taxing powers granted or delegated to Kansas City is found in Section 92.040 Mo.R.S. 1969, the pertinent provisions of which provide as follows:

"* * * All such cities, for city and local purposes, are hereby authorized to license, tax and regulate the occupation of merchants and manufacturers, and may graduate the amount of annual license imposed upon a merchant or manufacturer in proportion to the sales made by such merchant or manufacturer during the next year preceding any fixed date."

Another source of taxing power directly related to this matter is found in Article I, Section 57 of the City Charter which provides as follows:

"Subject only to the necessary extent of the limitations imposed by the Constitution and Laws of the United States and the State of Missouri, it shall have power:

(57) Trades, businesses, professions, callings. To license, tax and regulate any and every person, firm, association or corporation in anywise engaged in the occupation, business, trade, pursuit, profession, calling, employment, vocation, advocation or practice of * * *."

Pursuant to the above-referenced authorities, the law is quite clear that the State of Missouri does have the power to tax, regulate, and license businesses within the state. Further, that this power can be delegated pursuant to legislative action of the General Assembly of the State. That the General Assembly of the State of Missouri did

delegate this taxing power to appellee Kansas City pursuant to the enactment of Section 92.040 Mo.R.S. 1969.

Appellant James Carter cites the case of *White v. City of Evansville, Indiana,* 310 F. Supp. 569 (1970) as supportive of its contention that appellee Kansas City cannot require appellant to obtain an occupation license to operate his business (Cheshire Bed Co.) in Kansas City, Missouri. Appellant's reliance on *White v. City of Evansville* is misplaced for the reason that it is readily distinguishable from the instant cause. To begin with, in *White v. City of Evansville* the City was denying an occupation license to the petitioners who were "laborers". Those petitioners appeared not to be in business for themselves. They were cited under the Building Code of the City of Evansville, Indiana, dealing with the licensing of plumbers. Based upon that ordinance the City of Evansville required persons to obtain a license before engaging in the work of laying sewer pipe from main sewers or side sewers to buildings or structures on private real estate. The City of Evansville and such ordinance did not require such plumbing license of any person who lays sewer pipe for main sewers or side sewers in real estate other than that privately owned and possessed, such as public ways. In brief, the ordinance on its face and as applied by the City of Evansville, prevented the plaintiffs and other laborers from performing part of the work of their occupation as laborers, namely the laying of sewer pipe outside of buildings, inside property lines, which work they perform and which occupation they follow for their livelihood. In that case the United States District Court, S.D. Indiana, Evansville Division, held there was an improper classification and struck the ordinance down on the basis of equal protection of the laws, stating as follows:

"There is no reasonable basis for the classification established by Section 1311.01(c) of said ordinance of said Municipal Code of the defendant, City of Evansville, in the following words: '* * * or on any premises including connection with sewer or disposal systems within the city, * * *', which words, on their face and as applied by defendant, make a classification of sewer pipe laid outside of buildings in said city, of such pipe which is laid inside a property line, and such pipe which is laid outside a property line, and requires that a plumber's license be obtained by any person who lays sewer pipe, in the City of Evansville, Indiana, outside of buildings and inside a property line, but does not require that such license be obtained by any person who lays such sewer pipe outside a property line.

The aforesaid classification in the above-cited portion of Section 1311.01(c) City of Evansville Municipal Code, bears no reasonable relation to the safeguarding of life, health or property of the residence of defendant, City of Evansville, and is arbitrary and unreasonable."

It is obvious that in *White v. City of Evansville* we were dealing with a regulatory measure which sought to restrict the licensing of certain individuals. As a consequence thereof it has no relevancy to the instant cause which is an occupation license tax for the purpose of raising revenue. In addition, Kansas City does not attempt to deny appellant Carter a license but on the contrary insists that he apply and obtain a license to do business in the City. Furthermore, appellee Kansas City licenses and taxes for "revenue purposes" only businesses and not individuals or "natural citizens". The *White v. City of Evansville* case went off on a regulatory licensing code the basis

of which was the safeguarding of the life, health or property of the residents of the City of Evansville. Since its arbitrary classification had no reasonable relationship to the aforementioned criteria it was properly struck down by that Court. Furthermore, that Court found a non-uniform classification which failed to meet the criteria necessary to sustain it against a constitutional challenge of equal protection of the laws.

Appellee Kansas City submits in the instant cause we do not have a classification issue leading to a test of uniformity. The instant cause rests on the issue of a municipality's *"power"* to impose an occupation license tax for the purpose of revenue on businesses.

Appellee Kansas City submits that *White v. City of Evansville* is simply not in point with the issue in this particular cause.

In further support of appellant Carter's position, he cites the case of *U. S. v. Louisburg Schools*, (3rd Cir. 1976) 539 F2d 301. An analysis of that case by appellee Kansas City clearly reflects that it is distinguishable from the instant cause on the facts. In that case the United States brought action seeking a declaratory judgment that county and school districts could not impose and collect occupation and per capita taxes of federal employees and their dependents residing in the federal enclave known as the Louisburg Federal Penitentiary. There, the Pennsylvania Statutes ceding jurisdiction over the lands in question to the United States contained a provision that "said lands shall be exempt from the payment of all taxes, state and local". The Court held that the provision did not imply a reservation of power to tax persons residing on the property. Further, that Court found that the so-called occupation taxes imposed by school district in effect constituted an "income tax" within the Buck Act, 4 USC 105, and could be imposed, except with respect to the assessment

on housewives which was not computed with reference to income. However, further analyzing the facts of this case we find that the tax on housewives was only on those housewives who were gainfully employed on either a full or part-time basis in other occupations. With respect to that tax the Court found it not based on "income". Consequently, the assessment on housewives (gainfully employed in other occupations) was struck down as contra to and in violation of the Buck Act for the reason that the Buck Act permits taxation on federal enclaves by states only on "income" where the statute ceding jurisdiction over the lands in question to the United States contains an exemption provision disallowing payment of all taxes, state and local. Obviously, *U. S. v. Louisburg Schools* is not in point for the reason that it involved a construction of the Buck Act; it did not, carte blanche, tax housewives on the occupation of being a housewife as stated by appellant Carter; and even if it did, appellee Kansas City does not tax individuals or "natural citizens" who are not in business for themselves.

Appellant Has Preserved Nothing For Review.

Rule 84.04(d) of the Missouri Rules of Civil Procedure requires an appellant to state the precise action or ruling of the trial court sought to be reviewed. Moreover, an appellant must state wherein and why the alleged action or ruling is erroneous. The rule goes on to note that a mere abstract statement of law without showing how the statement is related to another action or ruling of the court will not suffice to meet the requirements of the law. The requirements of this rule are mandatory and noncompliance therewith in the points relied on section of a brief fails to preserve anything for review. See *Chambers v. Kansas City*, 446 SW2d 833 (Mo. 1969); *Dors v. Wulff*, 522 SW2d 325 (Mo. App. 1975); *Long v. Lincoln*, (Mo. App. 1975) 528 SW2d 512.

Appellee Kansas City, Missouri submits that appellant James Carter has preserved nothing for this Court to review.

Further, he preserved nothing for the Supreme Court of Missouri to review (appellant originally appealed from the Circuit Court to the Supreme Court of Missouri but jurisdiction was declined) and failed to adequately preserve and brief his issues in the Missouri Court of Appeals, Western District, as evidenced by that Court's opinion "Ex Gratia".

An examination of appellant Carter's Notice of Appeal to the Supreme Court of Missouri (from the Circuit Court of Jackson County) provides no basis on which Supreme Court jurisdiction can be said to be clearly and decisively communicated. Supreme Court Rule 81.08 requires that a "concise explanation" be given within ten days after the notice of appeal is filed in the Supreme Court. Appellant did file "Appellant's Suggestions in Support of Notice of Appeal" (his concise explanation) with the Supreme Court for the purpose of clearly delineating the issues upon which Supreme Court jurisdiction would rest. An examination of appellant's "Suggestions in Support of Notice of Appeal" compels one to the unequivocal conclusion that appellant did not exercise "fair precision" in bringing any federal issue to the attention of the Supreme Court of Missouri. See *New York ex rel. Bryant v. Zimmerman*, 278 US 63, 67.

The only statement of appellant Carter in his jurisdictional statement (Appellant's Suggestions in Support of Notice of Appeal—see Appendix herein) to the Supreme Court of Missouri capable of communicating appellant's theory of Supreme Court jurisdiction, as distinguished from an abstract statement of constitutional law, can be found on page 4, paragraph 2, thereof. Appellant Carter therein states that he rests Supreme Court jurisdiction on the

validity of Section 92.040 Mo.R.S. for the reason that he operates his business as an individual as distinguished from a corporation.

It would appear the Supreme Court of Missouri interpreted appellant's Jurisdictional Statement as involving a construction of Section 92.040 Mo.R.S.

The jurisdiction of the Supreme Court of Missouri is provided for in Article V, Section 3 of the Constitution of Missouri, 1945, the relevant provision as follows:

> "The Supreme Court shall have exclusive appellate jurisdiction in all cases involving the construction of the Constitution of the United States or of this State, the validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States, the construction of the revenue laws of this State, * * *."

It would appear that since Section 92.040 Mo.R.S. is not a revenue law of the state the Supreme Court of Missouri declined jurisdiction. See *Kansas City, Missouri v. Graybar Elec. Co., Inc.*, (Sup. Ct. Mo. 1970) 454 SW2d 23.

Thereafter, this cause was transferred by the Supreme Court of Missouri to the Missouri Court of Appeals, Western District, for hearing. To compound the matter, appellant Carter then submitted his brief in the Missouri Court of Appeals without once raising and briefing Section 92.040, the very issue he predicated his appeal on. Consequently, appellee Kansas City in submitting its Respondent's Brief to the Missouri Court of Appeals, Western District was compelled to preface its brief with "Respondent's Motion to Dismiss" for failure to comply with Rule 84.04(d).

For the reasons hereinbefore stated by appellee Kansas City it is obvious that appellant Carter failed to preserve

anything for review in the Missouri Court of Appeals, Western District.

Consequently, appellee Kansas City believes appellant Carter has preserved nothing for review and there is no substantial federal question presented to this Court. Consequently, appellee Kansas City respectfully submits that this Appeal be dismissed or in the alternative, the opinion below be affirmed.

CONCLUSION

For the foregoing reasons, appellee Kansas City respectfully submits that the questions presented by appellant Carter's jurisdictional statement, standing alone, are not jurisdictionally subject to review by this Court by way of appeal; and further, that said questions are so unsubstantial as not to need or require further argument. Accordingly, appellee Kansas City respectfully moves this Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in the case by the Missouri Court of Appeals, Western District.

Respectfully submitted,

AARON A. WILSON
City Attorney
GEORGE L. DEBITETTO
Assistant City Attorney
2800 City Hall
414 East 12th Street
Kansas City, Missouri 64106
274-1262
Attorneys for Appellee

IN THE MUNICIPAL COURT OF KANSAS CITY, MISSOURI

STATE OF MISSOURI, COUNTY OF JACKSON-GRAY-PLATTE ss THE UNDERSIGNED COMPLAINS AND STATES THAT: INFORMATION NO. G183384

On or About	In Kansas City, Missouri At or Near	At About (Time)	Last Name	First	Middle
4/6/78	2440 Rochester		Carter	James	E. Jr.

Address	City and State	Age	DOB	State of Birth	Race	Sex	Hgt.	Wgt.	Eyes	Hair
2440 Rochester	Kansas City, Mo.	39	5-11-37	MO	W	M	6'	160	BL	DK

SSN	Employer	Address	Relative Name	Address
500-42-5446				

DID UNLAWFULLY WITHIN THE AFORESAID CITY, COUNTY AND STATE COMMIT THE FOLLOWING OFFENSE:

Doing business without an occupation license

G183384

In Violation of the Revised Ordinances of Kansas City, Missouri, 1956, As Amended, Chapter 21 Section 21.20 Penalty Chapter 1 Section 1.17

Above Complaint Is True As I Verily Believe

COMPLAINANT: Edward Kanecke OFFICER: Edward Kanecke

On information and upon official oath the prosecutor complains and informs the Court that these facts are true as he verily believes.

Assistant City Counselor

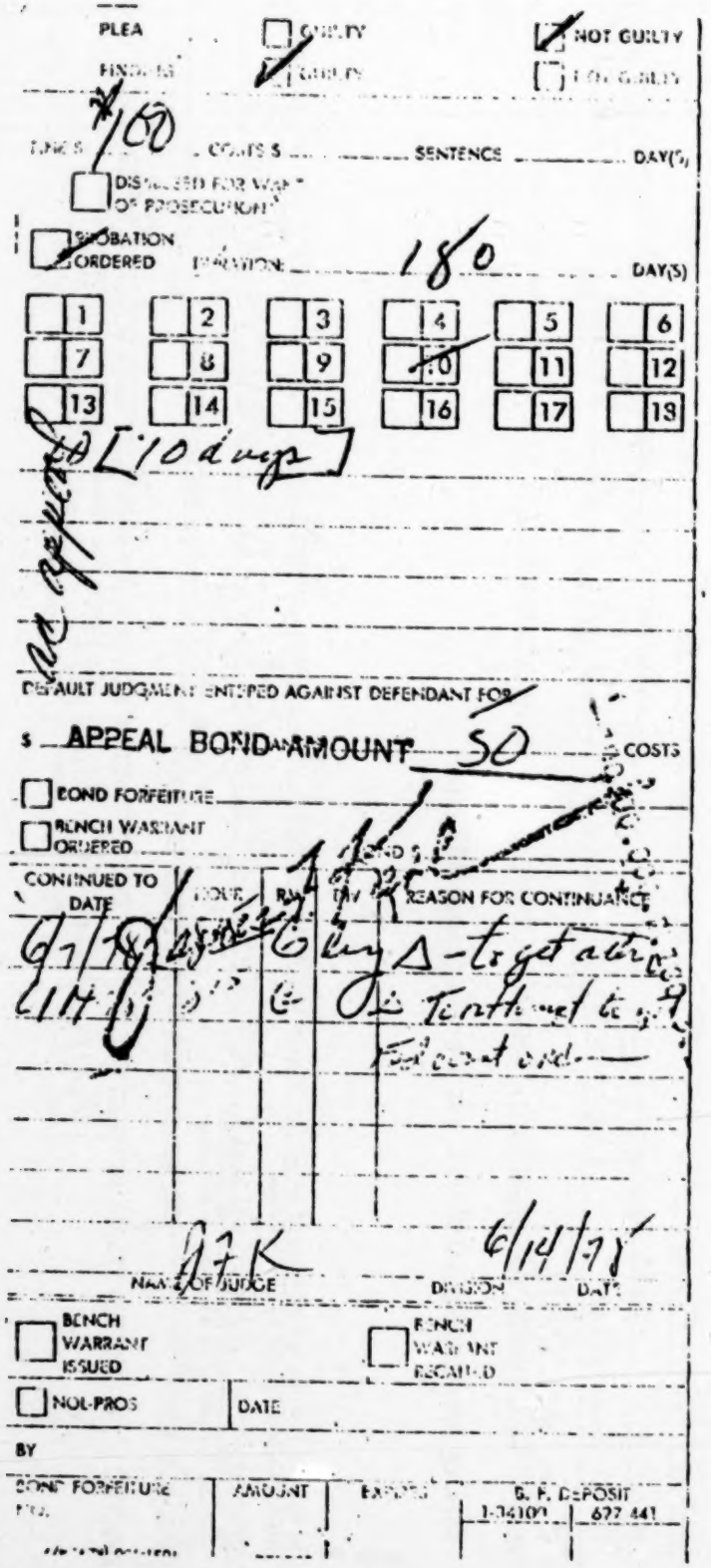
Serial No.	Unit	Pa. Area
2144	7	

MAY 10 19

Filed

Case Report Number	Date, Time & Location Of Arrest If Other Than Above:	Searched By
		PTS

Bond No.	Bond Amount	Property No.	Court Date	Time	Place	Room	Without Admitting Guilt, I Promise to Appear in the Municipal Court of Kansas City, Missouri, At the Time Indicated Hereon
			5-10-78	830 AM	1101 Locust Street	G	Defendant's Signature James E. Carter Jr.


PLEA ☐ GUILTY ☑ NOT GUILTY

FINDING ☑ GUILTY ☐ NOT GUILTY

FINE $ 100 COSTS $ _____ SENTENCE _____ DAY(S)

☐ DISMISSED FOR WANT OF PROSECUTION

☐ PROBATION ORDERED SUSPENSION 180 DAY(S)

☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6
☐ 7	☐ 8	☐ 9	☐ 10	☐ 11	☐ 12
☐ 13	☐ 14	☐ 15	☐ 16	☐ 17	☐ 18

Def Rpkd [10 days]

DEFAULT JUDGMENT ENTERED AGAINST DEFENDANT FOR

$ _____ APPEAL BOND AMOUNT 50 COSTS

☐ BOND FORFEITURE

☐ BENCH WARRANT ORDERED

CONTINUED TO DATE	HOUR	A.M. P.M.	DIV	REASON FOR CONTINUANCE
6/18/75	9:30		C	Dfs Δ - to get atty
6/19/75	9:30		C	Dfs Tenth mot to set aside default ord.

JFK — 6/14/75

NAME OF JUDGE — DIVISION — DATE

☐ BENCH WARRANT ISSUED ☐ BENCH WARRANT RECALLED

☐ NOL-PROS DATE

BY

BOND FORFEITURE	AMOUNT	EXONER.	B. F. DEPOSIT
PRE.			1-34101 | 622 441
[illegible]			

Sec. 21.34. Businesses, activities for which license is required.

Every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, engaged in any business occupation, pursuit, profession or trade, or in the keeping or maintaining of any institution, establishment, article, utility or commodity, which are or may hereafter be specified in the Charter of Kansas City, Missouri, Article I, Section 1(57), said article and section incorporated herein by reference, or specified otherwise in this chapter or in the statutes of the State of Missouri, shall procure and pay for a license therefor from the city, and such license fees shall be in the respective amount set out in this article and chapter, except as otherwise provided in this Code of Ordinances or other ordinances. (R.O. 1956, §30.260; 8th C.S. Ord. No. 42979, §A, 11-21-75)

IN THE CIRCUIT COURT FOR THE SIXTEENTH
JUDICIAL CIRCUIT OF MISSOURI

No. MA78-0836
KC # G183084

City of Kansas City, Missouri
Plaintiff

vs.

James E. Carter, Jr.
Defendant

16th. Circuit, Div. 4, Jackson Co., Honorable Alvin Randall; Mr. George DeBitetto, Pro. Attorney, 2700 City Hall, KC, MO 64106; Ms. Karen Todd, reporter

Notice of Appeal to Supreme Court of Missouri

(Filed September 14, 1978)

($50.00 Cash Bond Is Posted)

Notice is given that James E. Carter, Jr. appeals from the Judgment entered in this action on the 14th day of September, 1978.

Jurisdiction of the Supreme Court is based on fact that this appeal involves:

(Check appropriate box)

(X) Construction of the federal or state Constitution;

( ) Validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States;

( ) Construction of the revenue laws of Missouri;

( ) Title to an office under the State of Missouri;

( ) An offense punishable by death or life imprisonment.

The offense is ..... and the section of the statute under which defendant was convicted is .....

*If the basis of jurisdiction is constitutional construction, construction of the revenue laws, or that an offense punishable by death or life imprisonment is involved, give a concise explanation, together with suggestions, if desired.

The issue brought before the Court is whether the United States Constitution—in the securing of "Liberty" in the Preamble and in the Fifth Amendment, and in the securing of the Right to Contract—protects the Right of an individual to pursue a common law livelihood within the geographic area of a municipal corporation without being required to buy/purchase an occupational license tax (ordinance 21.20). The Missouri Supreme Court has jurisdiction pursuant to the Constitution of Missouri, Article V, Section 3. The Circuit Court holds that the license must be purchased. Suggestions will be filed subsequently.

/s/ James E. Carter, Jr.
Pro Se.
Address: 2440 Rochester
Kansas City, Mo. 64120
(816) 241-2722

Dated September 14, 1978.

Directions to Clerk

The clerk is required to mail a copy of the notice of appeal by registered mail to the attorneys of record of all parties other than those taking the appeal, and to mail a copy of the notice of appeal together with the docket fee to the clerk of the appellate court. If a party does not have an attorney, the notice must be mailed to the party at his last known address. A copy of the notice of appeal

is to be sent by registered mail to the Attorney General when the appeal involves a felony. The clerk should then fill in the memorandum on the reverse side hereof. (See S.Ct. Rule 81.08.)

*The concise explanation, as required by S.Ct. Rule 81.08, must be given with this notice or within 10 days after the notice is filed.

Civil Procedure Form No. 8-A Modified

THE SUPREME COURT OF THE STATE OF MISSOURI

S.C. #60983
KC #G183084

City of Kansas City, Missouri,
Complainant,

vs.

James E. Carter, Jr.,
Defendant/appellant.

Appellant's Suggestions in Support of Notice of Appeal

Comes now the defendant/appellant to show the Court that jurisdiction for the instant case is properly vested in the Supreme Court of the State of Missouri.

The Constitution of the State of Missouri, Article V, Section 3, declares that the Supreme Court shall have appellate jurisdiction of cases involving the construction of Federal or State Constitutions, and of revenue laws.

The appellant has continually pointed out to the complainant that inherent and basic Federal Constitutional Rights of the appellant, as a natural citizen and not as a corporation, have been violated. See *State v Knight*, 171 SW2d 720, *Baker v Baker*, 274 SW2d 322.

In the MOTION TO DISMISS FOR LACK OF JURISDICTION filed in Municipal Court on April 26, 1978, the defendant specifically states that "Liberty" is secured by the United States Constitution for the people and that "Liberty" has been adjudicated to include the right to make a living, and that rights so secured are not subject to revenue taxation.

In the PETITION FOR REMOVAL with four pages of suggestions/citations filed on June 6, the appellant again points out the Constitutional Right to "earn a living" as being violated by the complainant. The suggestions/citations repeatedly focus on "Liberty", the Constitutional Rights of individuals and that Rights so secured for the people should not be subject to taxation.

In the ORIGINAL ANSWER AND COUNTERCLAIM filed on June 12, in District Court and served on the complainant, paragraphs four, five, and six focus on the Right of "Liberty." Paragraphs seven, eight, and nine focus on the Right to contract. Paragraph 22 lists the Rights of Liberty, pursuit of happiness, earning a living, and of contracts. Paragraph 23 and 36 discuss the Right to earn a living and enter contracts. Paragraph 42 lists all constitutional rights that are violated.

The trial in Municipal Court on June 14 held that the defense so stated was based on the Constitution and must be adjudicated in the Circuit Court.

The appellant approached the bar in Circuit Court on July 14 to determine what grounds, if any, the complainant had for not filing a reply to the ORIGINAL ANSWER AND COUNTERCLAIM as required by the Missouri Rules of Court. After forty-five minutes, there had been no valid legal grounds shown for the lack of a reply. The Court issued an Order: "Sit down! We are going to have a trial!"

At no time was the defendant given an opportunity to make a Plea. At no time did the defendant give any indication that he was ready, or prepared, to proceed with a trial. After the witnesses for the prosecution, the Court denied the defendant the opportunity to file any papers after trial or to read from any papers during trial. The Court did accept for filing a copy of the ORIGINAL ANSWER AND COUNTERCLAIM. The original could not be found in the court jacket. The unexplained absence of the plea from the jacket and the desire of the complainant to suppress the plea coupled with an awareness of the information contained within the plea lead to the filing of the MOTION FOR ORDER TO SHOW CAUSE WHY THE PROSECUTING ATTORNEY SHOULD NOT BE HELD IN CONTEMPT on September 5. The Complainant has never made a reply to the ORIGINAL ANSWER AND COUNTERCLAIM and that inaction which has not been supported by any legal foundation has been the basis for the MOTION FOR DEFAULT JUDGMENT filed on July 18.

The MOTION FOR NEW TRIAL filed on July 18 asserted that the appellant wanted an opportunity to structure a defense based on the points detailed in previous pleas and motions filed relative to the case and the rein keeps alive the points asserted in the plea and motions. See *Shewalter v Missouri Pacific Railroad Co.*, 54 SW 224.

It was after the court had denied all after-trial motions and had pronounced sentence on September 14, that the appellant interrupted the court to point out for the record that the appellant maintained that his legal defense was on specifically stated Constitutional grounds detailed in motions and pleas previously filed. During this occasion, when the court usually entertains allocution, the feeling of the court was expressed with "Frankly, I never have been able to figure out what your defense was. Good day."

Let it be understood that the above description of the development of the action is to fully assert that certain and specific constitutional grounds have been continually presented to the courts and to the complainant by the defendant at all stages of litigation. See *Metzger v Metzger*, 145 SW2d 380, *Ingle v City of Fulton*, 260 SW2d 666. The above description of the court action is definately not presented to obtain a new trial in Circuit Court for procedural irregularities on merits that the circuit court is not empowered to adjudicate. See *State v Arnett*, 370 SW2d 169, *In Re Schell's Estate*, 370 SW2d 816, *Missouri Water Co. v Public Service Commission*, 308 SW2d 704.

Jurisdiction is confined to the Supreme Court on cases involving the construction of the State and Federal Constitutions, notwithstanding the oath of office of all judges. See *Albrecht v State Highway Commission*, 363 SW2d 643, *State v Becker*, 268 SW2d 51. The Supreme Court is the only court in Missouri that can legally construe the State and Federal Constitutions. See *Kansas City v Howe*, 416 SW2d 683, *Village of Bel-Nor v Barnett*, 358 SW2d 832.

The basis of constitutional grounds for affixing jurisdiction does not exclude requesting the Supreme Court to review the lower court's ruling of various incidental motions. See *State v Francis*, 8 SW 1, *Taylor v Dimmitt*, 78 SW2d 841.

The instant case questions the validity of Missouri Statute Section 92.040 when such merchant or manufacturer is operating as an individual as distinguished from a child of the state (corporation) and thereby invokes jurisdiction of the Supreme Court. See *Emory v St. James Distillery*, 143 SW2d 318.

It is therefore asserted that the Supreme Court of the State of Missouri has jurisdiction of the merits of

the instant case, and that the appellant has fulfilled his obligations in the lower courts to properly affix appellate jurisdiction therein.

One copy delivered to Complainant:
Received by Linda S. Gettz
Title Secretary
Date 9-22-78
Time 9:58 am

James E. Carter, Jr.
Litigant Pro Se
2440 Rochester
Kansas City, Missouri 64120
(816) 241-2722

(SEAL)
CLERK OF THE SUPREME COURT
STATE OF MISSOURI
Jefferson City, Missouri
65101

Thomas F. Simon
Clerk

Telephone
(314) 751-4144

February 16, 1979

Mr. James E. Carter, Jr.
2440 Rochester
Kansas City, Missouri 64102

In re: City of Kansas City, Missouri
vs. James E. Carter, Jr., No. 60893

Dear Mr. Carter:

This is to advise that the Court this day has entered the following order in the above-entitled cause:

"Cause ordered transferred to the Missouri Court of Appeals, Western District, in which jurisdiction is vested."

The files are being mailed this day to the Clerk of the Court of Appeals, Western District.

Yours very truly,

Thomas F. Simon
/s/ Mary Elizabeth McHaney
By Mary Elizabeth McHaney
Deputy Clerk, Court en Banc

cc: George L. DeBitetto
Mrs. Mary Louise Thomas, Clerk, Missouri Court of Appeals, Western District

P. S. to Mrs. Thomas: The transcript of record is enclosed with the files but it has not been filed. That will be up to your court.

§ 3. Jurisdiction of the supreme court

Section 3. The supreme court shall have exclusive appellate jurisdiction in all cases involving the construction of the Constitution of the United States or of this state, the validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States, the construction of the revenue laws of this state, the title to any office under this state, the title to real estate, in all civil cases where the state or any county or other political subdivision of the state or any state officer as such is a party, in all cases of felony, in other classes of cases provided by law, and until otherwise provided by law, in all cases where the amount in dispute, exclusive of costs, exceeds the sum of seventy-five hundred dollars.

92.040. Taxation and licensing of merchants and manufacturers by certain cities

For the purpose of state, county, and municipal taxes, merchandise held by merchants and the raw material,

merchandise, finished products, tools, machinery and appliances used or kept on hand by manufacturers shall constitute a class separate and distinct by itself. All cities in this state having a population of over three hundred thousand inhabitants are authorized to levy for local purposes a less *ad valorem* rate of taxation than that levied by them on real estate or other property for the same purpose, and said reductions may from time to time be arranged to apply on both or either the tax rate for payments of valid indebtedness or the tax rate for city purposes. All such cities, for city and local purposes, are hereby authorized to license, tax and regulate the occupation of merchants and manufacturers, and may graduate the amount of annual license imposed upon a merchant or manufacturer in proportion to the sales made by such merchant or manufacturer during the year next preceding any fixed date.

(R.S.1939, §§ 7743, 7744. Amended by L.1945 p. 1799, § 6)

80.04 Briefs—Contents

* * *

(d) Points Relied On. The points relied on shall state briefly and concisely what actions or rulings of the court are sought to be reviewed and wherein and why they are claimed to be erroneous, with citations of authorities thereunder. If more than three authorities are cited in support of a point made, the three authorities principally relied on shall be cited first. All authorities discussed in the argument shall be cited under the "Points Relied On". Long lists of citations should not be included.

Setting out only abstract statements of law without showing how they are related to any action or ruling of the court is not a compliance with this rule.

81.08 Notice of Appeal—Contents—Jurisdictional Statement Required—Trial Court Clerk to Notify, Whom

* * *

(b) Jurisdictional Statement. Appellant shall file with the clerk of the trial court as part of or with appellant's notice of appeal a concise explanation, together with suggestions not to exceed six pages, if desired, detailing the judgment or order appealed from and sufficient other facts about the case to show that jurisdiction of the appeal is in the court to which the appeal is taken. When the jurisdictional statement is filed as part of or with the notice of appeal, the clerk of the trial court shall serve copies of the same on all parties to the judgment other than the party or parties taking the appeal in accordance with subparagraph (d) of this Rule. Sufficient copies shall be supplied by appellant. As an alternative to filing a jurisdictional statement at the time of the filing of the notice of appeal, an appellant may, within ten days of the filing of the notice of appeal, file such jurisdictional statement with the clerk of the appellate court to which the appeal is taken and shall serve a copy of such jurisdictional statement on all other parties to the judgment. Any other party may, within ten days after being served with a copy of appellant's jurisdictional statement, file in the appellate court suggestions in opposition not to exceed six pages and shall serve a copy thereof on appellant and all other parties.

If the appeal involves a criminal or post-conviction case, the appellant's jurisdictional statement shall also give the nature of the offense and the section of the statute under which defendant was convicted.

The jurisdictional statement required by this Rule is for the purpose of facilitating appeals and preventing delays and is not a substitute for the jurisdictional statement required by these rules to be set forth in appellant's brief.